Amanah Raya Bhd (suing as Administrator of Estate of Devia Nathan s/o Savarimuthu, deceased) v Jerneh Insurance Bhd (formerly known as Jerneh Insurance Corp Sdn Bhd)

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W04–10 OF 2000
ABDUL MALEK AHMAD PCA, RICHARD MALANJUM AND AUGUSTINE PAUL JJCA
8 FEBRUARY 2005

Insurance — Accident insurance — Construction of policy — Exclusion clause — Death due to heart attack caused by fall — Whether death excluded by policy

Insurance — Contract of insurance — Exclusion clause — Construction — Death due to heart attack caused by fall — Whether death excluded by policy

The plaintiff (the appellant) brought an action against the defendant (the respondent) in the sessions court for the sum of RM122,000 with interest and costs arising from a personal accident insurance policy ('the policy'). The policy had been issued by the respondent to one Devia Nathan s/o Savarimuthu ('the deceased') of whom the appellant was the legal representative. The policy guaranteed payment in the event of injury or death of the deceased arising from an accident except in cases where the exclusion clause applied. It was an agreed fact that the deceased died after attempting to put out a fire in his neighbour's house. The evidence showed that the cause of death was a heart attack suffered by the deceased. Upon a claim having been made under the policy by the beneficiary of the deceased the respondent repudiated the claim on the ground that the death was not caused by an accident. The learned sessions court judge was of the view that the exclusion clause did not apply in this case and thus allowed the appellant's claim. The respondent appealed to the High Court which allowed the appeal with costs. Learned counsel for the appellant submitted that the exclusion clause did not apply in this case as the death was caused by a violent and severe heart attack which happened suddenly, unexpectedly and in an extreme situation while the deceased was trying to put out the fire. Learned counsel for the respondent said that it was clear from the exclusion clause that death caused by disease/infection was not covered by the policy and added that it was also clear from the exclusion clause that an accident which arose from disease/infection was also not covered by the PA policy. The issue was whether the death of the deceased was the direct result of the accident and, if so, whether the liability of the respondent was excluded by the operation of the exclusion clause pursuant to which it must be shown that it was the accident which arose from the disease.

Held, allowing the appeal with costs:

(1) The exclusion clause first sets out a list of instances in respect of which the coverage will not be effective. It then goes on to explain its meaning in two sentences. Even though the first sentence suggests that coverage is excluded for death due to injury resulting directly or indirectly from disease, its scope is circumscribed by the second sentence which states that what is not covered are 'accidents arising from the above-mentioned list'. What this means is that the exclusion clause will only apply where the death or injury is caused directly or indirectly by an accident which arose from one of the instances set out in the list. In other words it is, *inter alia*, the disease that must have caused the accident. The exclusion clause would not apply if the fall is due to an accident. This is the special meaning given to the exclusion clause in the policy itself and it must therefore prevail (see para 10); *Jason v Batten (1930) Ltd; Jason v British Traders' Insurance Co Ltd* [1969] 1 QB 281 and *Penn v Standard Life Insurance Co* (1912) 76 SE 262 distinguished.

(2) The evidence of PW1, the pathologist who conducted the post-mortem on the deceased, that the fall could have triggered the heart attack was not challenged. In the absence of any suggestion to the contrary by the respondent of this piece of evidence, it could be safely accepted that if not for the fall the deceased would not have had the heart attack. It was therefore the fall that resulted in the death of the deceased. The heart attack suffered by the deceased was a mere link in the chain initiated dominantly and effectively by the fall. The accident was therefore the proximate cause of his death. It followed that the respondent must indemnify the estate of the deceased in accordance with the terms of the policy subject, of course, to it being negated by the exclusion clause. The exclusion clause excludes coverage only for accidents arising directly or indirectly from, *inter alia*, disease. The respondent ought to have led evidence to show that it was the heart condition of the deceased that led to the fall and, consequently, the heart attack. If there had been such evidence, the disease would have been the indirect cause of the death thereby coming within the terms of the exclusion clause. As this burden had not been discharged, the exclusion clause was inapplicable (see para 20).

[**Bahasa Malaysia summary**

Plaintif (perayu) telah memulakan satu tindakan terhadap defendan (responden) di mahkamah sesyen untuk jumlah RM122,000 berserta faedah dan kos yang timbul daripada satu polisi insurans kemalangan peribadi ('polisi tersebut'). Polisi tersebut telah dikeluarkan oleh responden kepada Devia Nathan s/o Savarimuthu ('si mati') yang mana perayu adalah representasi sah. Polisi tersebut menjamin bayaran sekiranya berlaku kecederaan atau kematian si mati yang

timbul daripada satu kemalangan kecuali dalam kes di mana fasal pengecualian terpakai. Adalah fakta yang dipersetujui bahawa si mati meninggal dunia selepas cuba untuk memadamkan api rumah jirannya. Keterangan menunjukkan bahawa sebab kematian adalah sakit jantung yang dialami oleh si mati. Setelah tuntutan dibuat di bawah polisi tersebut oleh benefisiari si mati, responden membatalkan tuntutan itu atas alasan bahawa kematian itu tidak disebabkan oleh satu kemalangan. Hakim mahkamah sesyen yang bijaksana berpendapat bahawa fasal pengecualian itu tidak terpakai dalam kes ini dan oleh itu membenarkan tuntutan perayu. Responden merayu ke Mahkamah Tinggi yang membenarkan rayuan itu dengan kos. Peguam yang bijaksana bagi pihak perayu berhujah bahawa fasal pengecualian itu tidak terpakai dalam kes ini kerana kematian disebabkan oleh serangan sakit jantung yang berlaku tiba-tiba, tidak disangka-sangka dan dalam keadaan ekstrem semasa si mati sedang cuba memadamkan api. Peguam responden yang bijaksana berkata adalah jelas daripada fasal pengecualian bahawa kematian disebabkan oleh penyakit/jangkitan yang tidak dilindungi oleh polisi tersebut dan menambah bahawa adalah jelas dari fasal pengecualian bahawa satu kemalangan yang timbul disebabkan oleh penyakit/jangkitan juga tidak dilindungi oleh polisi PA. Persoalannya adalah sama ada kematian si mati akibat langsung kemalangan itu dan, jika begitu, sama ada liabiliti responden dikecualikan oleh operasi fasal pengecualian itu yang mana menurutnya perlu dibuktikan bahawa kemalangan itu timbul akibat penyakit tersebut.

Diputuskan, membenarkan rayuan tersebut dengan kos:

(1) Fasal pengecualian memberi senarai keadaan di mana perlindungan tidak berkesan. Ia seterusnya menerangkan maksudnya dalam dua ayat. Walaupun ayat pertama mencadangkan perlindungan dikecualikan untuk kematian disebabkan kecederaan akibat langsung atau tidak langsung penyakit, skopnya dihadkan oleh ayat kedua yang menyatakan bahawa apa yang tidak dilindungi adalah 'accidents arising from the above-mentioned list'. Ini bermaksud bahawa fasal pengecualian hanya akan terpakai di mana kematian atau kecederaan disebabkan secara langsung atau tidak oleh satu kemalangan yang timbul daripada salah satu daripada keadaan dalam senarai tersebut. Dalam erti kata lain, antara lain, penyakit itu yang menyebabkan kemalangan itu. Fasal pengecualian itu tidak terpakai jika si mati jatuh disebabkan satu kemalangan. Ini adalah maksud istimewa yang diberikan kepada fasal pengecualian dalam polisi tersebut itu sendiri dan oleh itu ia harus kekal (lihat perenggan 10); *Jason v Batten (1930) Ltd; Jason v British Traders' Insurance Co Ltd* [1969] 1 QB 281 dan *Penn v Standard Life Insurance Co* (1912) 76 SE 262 dibeza.

(2) Keterangan PW1, ahli patologi yang menjalankan 'post-mortem' ke atas si mati, bahawa jatuh tersebut mungkin telah mengakibatkan serangan jantung tidak dicabar. Dalam ketiadaan apa-apa cadangan yang menentang oleh responden berhubung keterangan ini, adalah selamat untuk menerima

bahawa jika bukan kerana si mati jatuh tidak mungkin beliau mengalami serangan jantung. Oleh demikian jatuh tersebut mengakibatkan kematian si mati. Serangan jantung yang dialami oleh si mati hanya satu rantaian dalam rangkaian yang bermula daripada jatuh itu. Kemalangan itu oleh demikian berkait rapat dengan sebab kematiannya. Adalah diikuti bahawa responden perlu mengindemnifikan harta pusaka si mati menurut polisi tersebut tertakluk kepada, sewajarnya, ia dibatalkan oleh fasal pengecualian itu. Fasal pengecualian hanya melindungi kemalangan yang timbul secara langsung atau tidak langsung daripada, antara lain, penyakit. Responden sepatutnya mengemukakan keterangan untuk menunjukkan bahawa keadaan jantung si mati yang menyebabkan si mati jatuh dan, akibat itu, berlaku serangan itu. Jika terdapat keterangan sedemikian, penyakit itu adalah sebab secara tidak langsung kematian dan terangkum dalam terma fasal pengecualian. Memandangkan beban ini belum dilepaskan, fasal pengecualian tersebut tidak terpakai (lihat perenggan 20).]

Notes

For cases on contract of insurance, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 26–29.

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Cases referred to

Etherington and the Lancashire and Yorkshire Accident Insurance Co, In the Matter of an Arbitration between the [1909] 1 KB 591 (refd)

Fidelity and Casualty Co of New York v Mitchell [1917] AC 592 (refd)

Fitton v Accidental Death Insurance Co (1864) 17 CBNS 122 (refd)

Jason v Batten (1930) Ltd; Jason v British Traders' Insurance Co Ltd [1969] 1 QB 281 (distd)

Kate Scarr and The General Accident Assurance Corp Ltd, Re An Arbitration between [1905] 1 KB 387 (refd)

Leis v Gardner (1965) Qd R 181 (refd)

Leonard v British Columbia Hydro and Power Authority (1965) 49 DLR (2d) 422 (refd)

Leyland Shipping Co Ltd v Norwich Union Fire Insurance Society Ltd [1918] AC 350 (refd)

McSteen v McCarthy (1952) NI 33 (refd)

Motor Union Insurance Co Ltd v Boggan (1923) 130 LT 588 (refd)

Penn v Standard Life Insurance Co (1912) 76 SE 262 (distd)

R v Bradshaw (1985) 82 Cr App R 79 (refd)

Ramsay v Watson (1961) 108 CLR 642 (refd)

Smith v Accident Insurance Co (1870) LR 5 Exch 302 (refd)

Van Vliet v Griffiths (1978) 19 SASR 195 (refd)

Legislation referred to

Evidence Act 1950 s 103

Appeal from: Civil Appeal No R3–12–322 of 1997 (High Court, Kuala Lumpur)

Tommy Thomas (Tommy Thomas) for the appellant.
David Morais (KS Ong and Khabir Dhillon with him) (KS Ong & Co) for the respondent.

Augustine Paul JCA (delivering judgment of the court):

[1] In this case the plaintiff (the appellant before us) brought an action against the defendant (the respondent before us) in the sessions court for the sum of RM122,000 with interest and costs arising from a personal accident insurance policy ('the policy'). The policy had been issued by the respondent to one Devia Nathan s/o Savarimuthu ('the deceased') of whom the appellant is the legal representative. The policy guaranteed payment in the event of injury or death of the deceased arising from an accident except in cases where the exclusion clause applied. It was an agreed fact that the deceased died after attempting to put out a fire in his neighbour's house. The evidence showed that the cause of death was a heart attack suffered by the deceased. Upon a claim having been made under the policy by the beneficiary of the deceased the respondent repudiated the claim on the ground that the death was not caused by an accident.

[2] The learned sessions court judge was of the view that the exclusion clause did not apply in this case and thus allowed the appellant's claim. As he said in his judgment:

> Di dalam kes ini, adalah fakta yang dipersetujui bahawa si mati meninggal dunia selepas cuba memadamkan satu kebakaran, membawa baldi air, di rumah jirannya. Dari keterangan SP1, terdapat calar-calar di bahu, muka dan badan si mati. Dari kecederaan tersebut, kemungkinan besar si mati telah terjatuh semasa membawa sebaldi air untuk cuba memadamkan kebakaran tersebut. Menurut SP1 lagi, tekanan fisikal itu bersama-sama dengan 'anxiety' dan kejatuhan boleh menyebabkan serangan jantung (triggered the heart attack). Saya berpendapat situasi ini termasuk dalam takrifan 'kemalangan'. Dan, bukan penyakit saluran darahnya yang menyebabkan kemalangan tersebut, malahan sebaliknya … saya memutuskan klausa pengecualian polisi insuran tersebut tidak terpakai di dalam kes ini.
>
> (English translation)
>
> In this case, it is an agreed fact that the deceased died after attempting to put out a fire while carrying a bucket of water at his neighbour's house. From the evidence of PW1, there were scratches on the shoulder, face and body of the deceased. From the injuries, the deceased had probably fallen down while carrying the bucket of water in his attempt to put out the fire. According to PW1, physical tension together with anxiety and the fall could have triggered the heart attack. In my opinion, this situation falls within the definition of 'accident'. And it is not

his blood vessel ailment which caused the accident. In fact on the contrary … Ifind that the exclusion clause of the insurance policy is not applicable in this case.

[3] The respondent appealed to the High Court. The learned High Court judge ('the learned judge'), having said that the central issue in the appeal was whether the deceased's death was caused by an accident or resulted from a disease, then went on to say in his judgment:

To come within the policy it must be shown that the insured is injured by accident. The accident must be the proximate cause of the death. For example, where the assured by misadventure goes in front of a train and is run over (*Lawrence v Accidental Insurance Co Ltd* (1881) 7 QBD 216); falls into a stream and is drowned (*Reynolds v Accidental Insurance Co* (1870) 22 LT 820); slips on a step (*Theobald v Railway Passengers' Assurance Co* (1854) 10 Exch 45); is thrown from a horse (*Re Etherington and Lancashire and Yorkshire Accident Insurance Co* (1909) 1 KB 591, CA); is suffocated by smoke from a burning house (*Trew v Railway Passengers' Assurance Co* (1861) 6H & N 839 at 844), the assured is entitled to recover under the policy, subject to any exception in the policy, by which liability in respect of the particular misadventure in question is excluded (see *Personal Accident Insurance (I) in General* (Vol 25) para 595 p 312). The exception may be so worded as to exclude disease, however caused, and then if the death is caused by an excepted disease the insurers will not be liable even though the disease is proximately caused by accident (see *Smith v Accident Insurance Co* (1870) LR 5 Exch 302 at 309; *Jason v British Traders Insurance Co Ltd* (1969) 1 Lloyd's Rep 281). The burden is on the claimant to prove that the injury has caused the death in the manner provided by the policy independently of any other cause and that if the claimant cannot discharge that onus his action must fail (see *Leong Luen Kiew & Anor v The New Zealand Insurance Co Ltd* [1939] MLJ (SSR) 173).

In the present case, the respondent failed to prove that the deceased died as a result of accident. Apart from the agreed facts that the deceased died after attempting to put out the fire on the neighbour's house, there is absolutely no evidence to support the judge's finding that there was physical exertion coupled with anxiety and a fall that caused the death. The finding of the learned judge that the situation was within the definition of 'accident' is a mere conjecture. So too is the finding that the deceased 'telah terjatuh semasa membawa sebaldi air' (English translation: fell down while carrying bucket of water). These findings are clearly unsupported by any evidence. There is no evidence that the deceased had fallen down and that he was carrying a pail of water. What was admitted as agreed facts is just that he died after 'attempting to put out the fire on the neighbour's house'. In my view, the agreed facts do not constitute accident. What was told by police to SP1 as to what had happened to the deceased prior to being sent to University Hospital is plain hearsay. Although there were abrasions to the deceased's shoulder, face and body, these did not cause the deceased's death. SP1 in his evidence testified clearly that 'no external injuries which cause or contribute to death.' Therefore, the decision of the trial judge that 'saya berpendapat situasi ini termasuk dalam tafsiran 'kemalangan'. Dan bukan penyakit saluran darahnya yang menyebabkan kemalangan tersebut, malahan sebaliknya' is indeed perverse. There is simply no evidence whatsoever to support such finding.

In my judgment, the disease is the proximate cause of the deceased's death, and the deceased died naturally from coronary artery disease, ie heart attack.

[4] In ruling that the death of the deceased came within the exclusion clause in the policy, the learned judge said:

> The exclusion clause is very clear in its term and it means what it says. It is part of the policy. The clause excludes the insurer appellant from liability in case of death, permanent disablement or any incurred medical expenses due to injury, resulting from 'disease/infection'. Death caused by disease/infection is not covered by the policy. It is clear from the autopsy report of SP1 that the death was caused by 'myocardial ischaemia' due to coronary artery disease and he was of the view that the death was natural. This opinion was shared and certified by another pathologist, Dr Ong Beng Beng who together with SP1 signed the autopsy report (P2). Thus, with the clear and unchallenged medical evidence before the court, it would not be right for the learned judge to ignore the evidence and to make the finding contrary to facts before the court. To my mind, the deceased's death comes within the exclusion clause and hence, the appellant is not liable under the policy. The deceased's death was occasioned by a disease outside the risk which the exclusion clause applied. There is no ambiguity in the exclusion clause even though the type of disease was not specified therein. The sessions court judge erred in holding that the exclusion clause was ambiguous. Death from natural causes is clearly not personal injury by accident (*Persin Kaur v The Renong Tin Dredging Co Ltd* [1967] 2 MLJ 286 at p 288 para I).

[5] Accordingly, the learned judge allowed the appeal with costs.

[6] What perhaps requires to be addressed first is the true nature and scope of the exclusion clause in the policy. Its proper meaning will play a determinative role in ascertaining the liability of the respondent. In considering its meaning, the learned judge said:

> The clause excludes the insurer appellant from liability in case of death, permanent disablement or any incurred medical expenses due to injury, resulting from 'disease/infection'. Death caused by disease/infection is not covered by the policy.

[7] Learned counsel for the appellant said that as the respondent had failed to define the scope of the exclusion clause, any ambiguity arising should be construed against them in accordance with the *contra proferentum* rule. He submitted that the exclusion clause does not apply in this case as the death was caused by a violent and severe heart attack which happened suddenly, unexpectedly and in an extreme situation while the deceased was trying to put out the fire. Learned counsel for the respondent said that it is clear from the exclusion clause that death caused by disease/infection was not covered by the policy and added that it is also clear from the said exclusion clause that an accident which arose from disease/infection was also not covered by the said PA policy.

[8] The exclusion clause reads as follows:

> EXCLUSIONS
>
> Once an eligible individual has been accepted under the Amsure Personal Accident Insurance Plan C, his coverage WILL NOT BE EFFECTIVE for the following:

(1) War or acts of war (2) Invasion or act of foreign enemy (whether war be declared or not), civil war, state-wide or nation-wide insurrection to overthrow the government or against government policies (3) Self-inflicted injuries (4) Insanity (5) Suicide (6)Disease/Infection (7) Intoxication (by alcohol or drugs) (8) Pregnancy/Childbirth/ Miscarriage (9) Provoked murder or assault (10) Flying other than as a fare-paying passenger (11) Committing unlawful acts (12) Hazardous sports like: (a) Hunting (b) Winter sports (c) Water-skiing or jumping (d) Under-water activities involving the use of breathing apparatus (e) Racing (other than on foot) (f) Mountaineering (g) Ice hockey (h) Polo-playing (i) Yacht racing (j) Steeple-chasing (13) Ionising radiation, radioactive contamination, nuclear weapons material.

This means that the Amsure Personal Accident Insurance Plan C excludes coverage for death, permanent disablement or any incurred medical expenses due to injury, resulting directly or indirectly from the above-mentioned list. Hence accidents arising from the above-mentioned list are not covered and the insurer is NOT liable to pay any benefits.

[9] It may be useful to bear in mind the rules of construction of insurance policies before determining the meaning of the exclusion clause. As Fisher, J said in *Jason v Batten (1930) Ltd; Jason v British Traders' Insurance Co Ltd* [1969] 1QB 281 at p 290:

A policy of insurance is subject to the same rules of construction as any other written contract. The words used in it must be given their plain, ordinary meaning in the context of the policy looked at as a whole, *subject to any special definitions contained in the policy*. In case of ambiguity the *contra proferentum* rule will apply but apart from this there is no rule of law which requires me to strain the language of the policy in favour of or against the insured person. (Emphasis added.)

[10] It will be observed that the exclusion clause first sets out a list of instances in respect of which the coverage will not be effective. It then goes on to explain its meaning in two sentences. Even though the first sentence suggests that coverage is excluded for death due to injury resulting directly or indirectly from disease, its scope is circumscribed by the second sentence which states that what is not covered are 'accidents arising from the above-mentioned list'. What this means is that the exclusion clause would only apply where the death or injury was caused directly or indirectly by an accident which arose from one of the instances set out in the list. In other words it is, *inter alia*, the disease that must have caused the accident. Where, therefore, a person with a weak heart has a fall which triggers a heart attack it must be established that it is the person's heart condition that caused the fall. The exclusion clause will not apply if the fall was due to an accident. This is the special meaning given to the exclusion clause in the policy itself and it must therefore prevail. It is quite differently worded compared to such clauses in similar insurance policies which exclude liability in respect of death or injury caused directly or indirectly by any disease when there is an accident. Such an articulately worded exclusion clause can be found in the insurance policy which arose for consideration in *Jason v Batten*. It reads as follows:

A (2) No benefit shall be payable under this Policy in respect of Death, Injury or Disablement directly or indirectly caused by or arising or resulting from or traceable to …

(iii) …

(a) …

B (b) Any physical defect or infirmity which existed prior to an accident.

[11] An exclusion clause worded in such a way will make it clear that the death or disablement which arose from an accident was caused by a disease which existed prior to the accident. Where such an exclusion clause applies C the accident must be independent of the physical defect or infirmity and must be the sole cause of the injury or death. The liability of an insurer in such cases is as described in *Penn v Standard Life Insurance Co* (1912) 76 SE 262 which was approved in *Jason v Batten* at p 291:

D If the accident causes the disease which, together with the accident, results in the death or injury, the accident is alone the cause. If at the time of the accident the insured was suffering from disease, but the disease had no causal connection with the injury or death, the accident is the sole cause. Where at the time of the accident there was an existing disease which co-operating with the accident resulted in injury or death, the accident is not the sole or independent cause.

E **[12]** However, in this case, the test as just stated is not applicable as the exclusion clause excludes liability only for accidents arising from, *inter alia*, disease.

[13] Be that as it may, even without the exclusion clause, a claim can be F successfully made in this case only if the death or permanent disablement is the direct result of an accident as stated in the Personal Accident Insurance Plan at p 124 of the Appeal Record. It reads as follows:

G The AMSURE Personal Accident Insurance Plan provides coverage for death, permanent disablement and medical expenses resulting from any accident which might befall an individual. Hence, only if an individual suffers death, permanent disablement or incurs medical expenses as a direct result of an accident, can any claim be made under the AMSURE Personal Accident Insurance Plan.

[14] It must be noted that this provision does not cover a situation where the injury or death is the indirect result of an accident. Thus the initial burden H is on the appellant to show that the death of the deceased was the direct result of an accident. There will be no liability if the death was not the direct result of an accident. If the exclusion clause is applicable it will be an exception to the general liability of the respondent and the onus of proving that a claim is within the exception will be on them (see *Motor Union Insurance Co Ltd v Boggan* I (1923) 130 LT 588; *Smith v Accident Insurance Co* (1870) LR 5 Exch 302; *McSteen v McCarthy* (1952) NI 33). This is consistent with s 103 of the Evidence Act 1950. What therefore requires consideration in this case is whether the death

of the deceased was the direct result of the accident and, if so, whether the liability of the respondent is excluded by the operation of the exclusion clause pursuant to which it must be shown that it was the accident which arose from the disease.

[15] The case for the appellant rested on the oral evidence of Dr Pailoor Jayalakshmi (PW1), the pathologist who conducted the post-mortem on the deceased; some agreed documents and an agreed fact while the respondent called Geng Mum Har (DW1), one of their assistant managers. As stated earlier, the agreed fact is that the deceased died after attempting to put out a fire in his neighbour's house. In her examination-in-chief PW1 said:

> Before I conducted the autopsy, the history — the deceased was helping his neighbour to put off a fire the neighbour's house at about 2100 hours on 24 November 1994. He was carrying some bucket of water when he fell down. He's helped by friend and given a massage. However he became restless and complained of abdomminal pain. He's brought to A & E of University Hospital. He collapsed in the A & E at about 2245 hrs. Resuscitation was started to no avail and pronounced death at 2330 hrs on the same night.

[16] She then said that the deceased had abrasions on the face, shoulder and body. It was her opinion that these injuries suggest that he had a fall and that they are consistent with him having fallen down. Having said that the cause of death is myocardial infarction she added:

> In my opinion, this attack could be triggered by this fall.

[17] In her cross-examination, PW1 said that she had no personal knowledge as to how the accident happened and that she obtained the information from the police. In answer to further questions, she said:

> Q The thickening of the wall is caused by what?
>
> A By fat.
>
> Q The second finding, histological. What is infarction.
>
> A Death of deceased due to lack of blood supply.
>
> Q How old is the old infarction?
>
> A May be between 3 weeks, more than 3 weeks we call it old infarction.
>
> Q Is it normal for 41 years old deceased to have this old infarction?
>
> A Old infection means he'd an attack in the past.
>
> Q Is it normal for 41 years old to have old infaction?
>
> A It depends.

Q For 72 kilo weight and 170m in height over weight?

A A bit. Not obese.

Q From the report, what was the cause of death?

A Myocardial ischaemia due to coronary artery disease.

Q For person having it, what sympton?

A Some patient when they get heart attack may not have any symptom.

Q Not even slight?

A No. I based on autopsy cases. Where some have no previous history. These are silent attack. A person may have no symptom.

[18] In her re-examination, she said:

> Some of the autopsy that I have done, the deceased had no history of heart attack. It is true one may not know having heart attack until the attack and kill him.

[19] The learned judge had ruled that there was no evidence to show that the deceased had fallen down in view of the inadmissibility of the evidence that he had fallen while carrying buckets of water. He went on to rule that the abrasions on the deceased's body did not cause his death and that the proximate cause of death was the disease. Even if the reason why the deceased fell is inadmissible, it is an error to say that there is no evidence to show that he had fallen down. PW1 clearly said that the injuries on the body of the deceased suggest that he had a fall. In the absence of a challenge of this evidence of PW1 by the respondent, it must be accepted that the deceased had a fall. However, the cause of the fall is essential to establish the liability of the respondent. The ruling made by the learned judge on the admissibility of the evidence that the deceased had fallen while carrying buckets of water must be reviewed against the background of cases such as *R v Bradshaw* (1985) 82 Cr App R 79, *Ramsay v Watson* (1961) 108 CLR 642, *Leis v Gardner* (1965) Qd R 181, *Leonard v British Columbia Hydro and Power Authority* (1965) 49 DLR (2d) 422 and *Van Vliet v Griffiths* (1978) 19 SASR 195 where it was held that a doctor may not state what a patient told him about past symptoms as evidence of the existence of those symptoms, because that would infringe the rule against hearsay, but he may give evidence of what the patient told him in order to explain the grounds on which he came to a conclusion with regard to the patient's condition. There can be no objection to such evidence coming from another source where the patient is very ill as in this case where the deceased had collapsed. The evidence ruled as inadmissible by the learned judge is necessary to explain PW1's opinion that the deceased had a fall. On the authorities referred to, the evidence is therefore admissible. Thus, there is evidence to show that the deceased had a fall while carrying the buckets of water. This shows that the cause of the deceased's fall is an accident. However, the cause of his death is

a heart attack and he has had a previous attack. This raises the question of whether the respondent is liable when there is an accident though the subsequent death is caused by a heart attack. *Leyland Shipping Co Ltd v Norwich Union Fire Insurance Society Ltd* [1918] AC 350 supports the proposition that even where there is an exception relating to disease, it is inapplicable where the death or disablement, though ultimately due to disease, is nevertheless proximately caused by accident, the disease being a mere link in the chain initiated dominantly and effectively by the accident. Thus, where a fall causes hernia or pneumonia, from which the assured dies, his death is caused by accident, and an express exception against hernia or pneumonia has no application (see *Fitton v Accidental Death Insurance Co* (1864) 17 CBNS 122; *In the Matter of an Arbitration between the Etherington and the Lancashire and Yorkshire Accident Insurance Co* [1909] 1 KB 591). Even where a fall brings out tuberculosis which was latent in the assured's system, but which would not have manifested itself but for the fall, the disablement is proximately caused by the fall, and is not within an exception against disease (see *Fidelity and Casualty Co of New York v Mitchell* [1917] AC 592). In the case of *Re An Arbitration between Kate Scarr and The General Accident Assurance Corp Ltd* [1905] 1 KB 387 the assured's heart was in a weak and unhealthy condition. As a result of physical exertion, he died of heart failure. The claim against the insurance company failed because the injury which resulted in the death of the assured was not caused by accidental means. As Bray J said in his judgment at p 393:

> The injury to the heart, which I assume to be bodily injury, seems to me to have been caused by the violent exertion, and the violent exertion was intended and not accidental. There was no slip or fall or blow. He intended to push and pull, and he pushed and pulled.

[20] Clearly, the claim would have succeeded if the injury had been caused by an accident. The evidence of PW1 that the fall could have triggered the heart attack was not challenged. In the absence of any suggestion to the contrary by the respondent of this piece of evidence, it can be safely accepted that if not for the fall the deceased would not have had the heart attack. It is therefore the fall that resulted in the death of the deceased. The heart attack suffered by the deceased is a mere link in the chain initiated dominantly and effectively by the fall. The accident is therefore the proximate cause of his death. It follows that the respondent must indemnify the estate of the deceased in accordance with the terms of the policy subject, of course, to it being negated by the exclusion clause. As stated earlier, the exclusion clause excludes coverage only for accidents arising directly or indirectly from, *inter alia*, disease. The respondent ought to have led evidence to show that it was the heart condition of the deceased that led to the fall and, consequently, the heart attack. If there had been such evidence, the disease would have been the indirect cause of the death thereby coming within the terms of the exclusion clause. As this burden has not been discharged, the exclusion clause is inapplicable.

[21] In the upshot, we were of the unanimous view that the appeal must be allowed with costs. Accordingly, we set aside the order of the High Court and confirmed the order made by the sessions court.

Appeal allowed with costs.

Reported by Loo Lai Mee